

RANDALL S. LUSKEY (SBN: 240915)
rluskey@paulweiss.com
**PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP**
535 Mission Street, 24th Floor
San Francisco, CA 94105
Telephone: (628) 432-5100
Facsimile: (628) 232-3101

ROBERT ATKINS (*Pro Hac Vice* admitted)
ratkins@paulweiss.com
CAITLIN E. GRUSAUSKAS (*Pro Hac Vice* admitted)
cgrusauskas@paulweiss.com
ANDREA M. KELLER (*Pro Hac Vice* admitted)
akeller@paulweiss.com
**PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP**
1285 Avenue of the Americas
New York, NY 10019
Telephone: (212) 373-3000
Facsimile: (212) 757-3990

Attorneys for Defendants
UBER TECHNOLOGIES, INC.;
RASIER, LLC; and RASIER-CA, LLC

[Additional Counsel Listed on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: UBER TECHNOLOGIES, INC.,
PASSENGER SEXUAL ASSAULT
LITIGATION

This Document Relates to:

ALL ACTIONS

Case No. 3:23-md-03084-CRB

**DEFENDANTS UBER TECHNOLOGIES,
INC., RASIER, LLC, RASIER-CA, LLC'S
STATEMENT IN SUPPORT OF
PLAINTIFFS' ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
ANOTHER PARTY'S MATERIALS
SHOULD BE SEALED [ECF No. 1811]**

Judge: Hon. Lisa J. Cisneros
Courtroom: G – 15th Floor

DEFENDANTS' STATEMENT IN SUPPORT OF SEALING**CONFIDENTIAL MATERIALS**

Pursuant to Civil Local Rules 79-5(f)(3) and (c)(1) and the Protective Order entered in this case dated December 28, 2023, ECF 176 ("Protective Order"), Defendants Uber Technologies, Inc., Rasier, LLC, Rasier-CA, LLC (collectively "Uber"), respectfully submit this statement in support of Plaintiffs' Administrative Motion to Consider Whether Another Party's Material Should Be Filed Under Seal, dated October 30, 2024, ECF 1811 ("Plaintiffs' Motion").

I. BACKGROUND AND REQUESTED SEALING

Plaintiffs' Motion concerns eight documents:

Document	Description	Designating Party
Unredacted Joint Letter Brief on Privilege Disputes	References to documents marked Confidential	Uber
Unredacted Declaration of T. Ellis ISO Joint Letter Brief on Privilege Disputes	References to documents marked Confidential	Uber
Ex. A to Ellis Declaration ISO Joint Discovery Letter	Document produced by Uber and marked Confidential	Uber
Ex. B to Ellis Declaration ISO Joint Discovery Letter	Chart created using privilege logs marked Confidential	Uber
Ex. C to Ellis Declaration ISO Joint Discovery Letter	Chart created using privilege logs marked Confidential	Uber
Declaration of S. Binnings ISO Joint Discovery Letter	Contains general descriptions of confidential and privileged documents and matters on which Uber sought and received legal advice	Uber
Declaration of D. Kolta ISO Joint Discovery Letter	Contains general descriptions of confidential and privileged documents and matters on which Uber sought and received legal advice	Uber
Declaration of M. Frangopoulos ISO Joint Discovery Letter	Contains general descriptions of confidential and privileged documents and matters on which Uber sought and received legal advice	Uber

These documents contain confidential, non-public and proprietary information, including confidential documents containing descriptions of confidential business information, descriptions of

confidential documents, general descriptions of privileged documents, and descriptions of the matters on which Uber sought and received legal advice. Disclosure of such documents would harm Uber's competitive standing. Uber therefore submits this statement requesting that the Court seal the documents under Local Rule 79-5(f)(3).

II. LEGAL STANDARD

Documents which do not relate directly to the merits of a case are properly sealed when a moving party makes "a particularized showing under the good cause standard of Rule 26(c)." *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (internal quotations omitted); *Ctr. For Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1101-02 (9th Cir. 2016). Federal Rule of Civil Procedure 26(c) states that good cause may exist when issuing an order to seal is necessary to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c).

The documents here are related to a brief related to privilege disputes; they are not produced in relation to a dispositive motion. *See United States v. Selugh*, 896 F. 3d 1007, 1015 (9th Cir. 2018); *Brown v. Google LLC*, No. 20-cv-03664-YGR (SVK), 2022 WL 4227545, at *1; *Adtrader, Inc. v. Google LLC*, No. 17-cv-07082-BLF 2020 WL 6387381 at *1 (N.D. Cal. Feb. 24, 2020). Therefore, the good cause standard applies. Discovery motion materials "are actually one step further removed in public concern from the trial process than the discovery materials themselves." *Selugh*, 896 F. 3d at 1015. District Courts have discretion to balance the interests of private parties and public disclosure when deciding to seal documents. *Kamakana*, 447 F.3d at 1180.

Descriptions of the "circumstances under which [a party] sought and received legal advice and the purposes of such advice" is a "sufficient justification for sealing, even under the higher 'compelling reason' standard," as well as related "confidential business information." *Fed. Trade Comm'n v. Qualcomm Inc.*, No. 17-CV-00220-LHK, 2018 WL 2317835, at *6 (N.D. Cal. May 22, 2018) (collecting cases). Here, the lower "good cause" standard applies, making sealing all the more appropriate. *See also, e.g.* ECF Nos. 217, 221 (sealing exhibit that contained Uber employee names, business titles, and employment dates, among other information). "[C]ourts routinely grant motions

1 to seal [] confidential business information.” *Natera, Inc. v. CareDx, Inc.*, No. 23-MC-80117-LJC,
 2 2023 WL 4536375, at *2 (N.D. Cal. June 6, 2023) (Cisneros, J.).

3 **III. UBER’S MATERIAL SHOULD BE KEPT UNDER SEAL**

4 The eight documents related to the joint letter brief on privilege disputes (ECF 1812) should
 5 be sealed under the good cause standard. These documents contain confidential, non-public and
 6 proprietary information, including confidential documents containing descriptions of confidential
 7 business information, descriptions of confidential documents, general descriptions of privileged
 8 documents, and descriptions of the matters on which Uber sought and received legal advice.
 9 Disclosure of such documents would harm Uber’s competitive standing. *See Cummings Decl.* ¶¶ 2-
 10 10. Uber has a legitimate interest in sealing the documents in order to avoid harm to its competitive
 11 standing. There are no less restrictive alternatives to sealing these documents.

12 **A. Failing to Seal the Documents Would Harm Uber**

13 The documents at issue contain confidential, non-public information, including confidential,
 14 non-public and proprietary information, confidential documents containing descriptions of
 15 confidential business information, descriptions of confidential documents, general descriptions of
 16 privileged documents, and descriptions of the matters on which Uber sought and received legal advice
 17 that could cause harm to Uber if publicly disseminated. *See Cummings Decl.* ¶¶ 2-10.

18 **Unredacted Joint Letter Brief re: Privilege Disputes:** The redacted portions of the letter
 19 brief contain the names and descriptions of confidential and privileged documents, names of internal
 20 business systems used by Uber, descriptions of Uber’s confidential business proposals and practices
 21 and business relationships, employee names, and names of and general descriptions of privileged
 22 documents, including the matters on which Uber sought and received legal advice. It also contains
 23 references to a publicly available media article, but connects the article to a confidential, privileged
 24 document and general descriptions thereof. Disclosure of the circumstances under which a party
 25 sought and received legal advice and the purposes of such advice, as well as related confidential
 26 business information should be sealed. *Fed. Trade Comm’n v. Qualcomm Inc.*, No. 17-CV-00220-
 27 LHK, 2018 WL 2317835, at *6 (N.D. Cal. May 22, 2018).

1 **Unredacted Declaration of T. Ellis:** The redacted portions of this declaration contain the
 2 descriptive name of a confidential and privileged document related to a business strategy document,
 3 names of internal business systems used by Uber, and descriptions of a confidential business decision
 4 or proposal. “[C]ourts routinely grant motions to seal [] confidential business information.” *Natera,*
 5 *Inc.*, 2023 WL 4536375, at *2.

6 **Ex. A to Ellis Declaration:** This is a confidential, non-public, internal Uber email. The email
 7 discusses a confidential business proposal and strategies regarding the same. “[C]ourts routinely grant
 8 motions to seal [] confidential business information.” *Natera, Inc.*, 2023 WL 4536375, at *2.

9 **Ex. B to Ellis Declaration:** This is a chart created from confidential privilege log(s) provided
 10 by Uber. The log contains information related to privileged documents, including numerous employee
 11 names and email addresses, document titles and email subjects, attorney names, and general
 12 descriptions of the bases for the privilege claims, revealing the matters on which Uber sought and
 13 received legal advice. Disclosure of the circumstances under which a party sought and received legal
 14 advice and the purposes of such advice, as well as related confidential business information should be
 15 sealed. *Qualcomm Inc.*, 2018 WL 2317835, at *6; *see also Fernandez v. CoreLogic Credco, LLC*,
 16 No. 20-CV-1262-JM-AGS, 2023 WL 11445613, at *1 (S.D. Cal. Mar. 8, 2023) (finding good cause
 17 to seal privilege logs that “reflect[ed] the identity of documents and communications withheld ... from
 18 production on privilege grounds”).

19 **Ex. C to Ellis Declaration:** This is a chart created from information in confidential privilege
 20 log(s) provided by Uber and from Uber’s draft portion of the letter brief. Information from the log
 21 contains custodian names and general descriptions of the bases for the privilege claims, revealing the
 22 matters on which Uber sought and received legal advice. The information from the letter brief contains
 23 redacted information (described above), including the descriptions of confidential and privileged
 24 documents, employee and attorney names, and general descriptions of privileged documents,
 25 including Uber’s business relationships and the matters on which Uber sought and received legal
 26 advice. Disclosure of the circumstances under which a party sought and received legal advice and the
 27 purposes of such advice, as well as related confidential business information should be sealed.

1 *Qualcomm Inc.*, 2018 WL 2317835, at *6; *see also Fernandez*, 2023 WL 11445613, at *1 (S.D. Cal.
 2 Mar. 8, 2023) (finding good cause to seal privilege logs that “reflect[ed] the identity of documents and
 3 communications withheld ... from production on privilege grounds”).

4 **Declaration of Scott Binnings:** This declaration contains descriptions of confidential and
 5 privileged documents and the business practices, plans, or communications described therein, names
 6 of Uber employees and attorneys, and general descriptions of the matters on which Uber sought and
 7 received legal advice. Disclosure of the circumstances under which a party sought and received legal
 8 advice and the purposes of such advice, as well as related confidential business information should be
 9 sealed. *Qualcomm Inc.*, 2018 WL 2317835, at *6.

10 **Declaration of Daniel Kolta:** This declaration contains descriptions of confidential and
 11 privileged documents and the business practices, plans, or communications described therein, names
 12 of Uber employees and attorneys, and general descriptions of the matters on which Uber sought and
 13 received legal advice. Disclosure of the circumstances under which a party sought and received legal
 14 advice and the purposes of such advice, as well as related confidential business information should be
 15 sealed. *Qualcomm Inc.*, 2018 WL 2317835, at *6.

16 **Declaration of Maureen Frangopoulos:** This declaration contains descriptions of
 17 confidential and privileged documents and the business practices, plans, communications, and
 18 partnerships described therein, names of Uber employees and attorneys, and general descriptions of
 19 the matters on which Uber sought and received legal advice, as well as information about Uber’s
 20 business relationships. Disclosure of the circumstances under which a party sought and received legal
 21 advice and the purposes of such advice, as well as related confidential business information should be
 22 sealed. *Qualcomm Inc.*, 2018 WL 2317835, at *6.

23 **B. A Less Restrictive Alternative to Sealing is Insufficient to Prevent Harm**

24 The letter brief and Ellis Declaration have already been redacted, and the redacted versions
 25 filed on the docket. No less restrictive alternative to sealing the documents at issue is sufficient. *See*
 26 *Cummings Decl.* ¶¶ 2-10. Actions short of sealing the documents would not protect Uber’s legitimate
 27 interests.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Uber respectfully requests that the Court order that the documents
3 listed above be maintained under seal.

4
5 DATED: October 31, 2024

Respectfully submitted,

6 **SHOOK HARDY & BACON L.L.P.**

7 By: /s/ Michael B. Shortnacy

8 MICHAEL B. SHORTNACY

9 MICHAEL B. SHORTNACY (SBN: 277035)
mshortnacy@shb.com

10 **SHOOK, HARDY & BACON L.L.P.**

2121 Avenue of the Stars, Ste. 1400

Los Angeles, CA 90067

Telephone: (424) 285-8330

Facsimile: (424) 204-9093

11
12
13 PATRICK OOT (*Pro Hac Vice*)

oot@shb.com

14 **SHOOK, HARDY & BACON L.L.P.**

1800 K St. NW Ste. 1000

Washington, DC 20006

Telephone: (202) 783-8400

Facsimile: (202) 783-4211

15
16
17 KYLE N. SMITH (*Pro Hac Vice* admitted)

ksmith@paulweiss.com

JESSICA E. PHILLIPS (*Pro Hac Vice* admitted)

jphillips@paulweiss.com

18
19 **PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP**

2001 K Street, NW

Washington DC, 20006

Telephone: (202) 223-7300

Facsimile: (202) 223-7420

21
22 *Attorney for Defendants*

UBER TECHNOLOGIES, INC.,

23 RASIER, LLC, and RASIER-CA, LLC